

109TH CONGRESS
2D SESSION

H. R. 4976

To reiterate that chapters 119 and 121 of title 18, United States Code, and the Foreign Intelligence Surveillance Act of 1978 are the exclusive means by which domestic electronic surveillance may be conducted, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 16, 2006

Mr. SCHIFF (for himself and Mr. FLAKE) introduced the following bill; which was referred to the Committee on the Judiciary, and in addition to the Select Committee on Intelligence (Permanent Select), for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To reiterate that chapters 119 and 121 of title 18, United States Code, and the Foreign Intelligence Surveillance Act of 1978 are the exclusive means by which domestic electronic surveillance may be conducted, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “NSA Oversight Act”.

1 **SEC. 2. FINDINGS.**

2 Congress finds the following:

3 (1) On September 11, 2001, acts of treacherous
4 violence were committed against the United States
5 and its citizens.

6 (2) Such acts render it both necessary and ap-
7 propriate that the United States exercise its right to
8 self-defense by protecting United States citizens
9 both at home and abroad.

10 (3) The Federal Government has a duty to pur-
11 sue al Qaeda and other enemies of the United States
12 with all available tools, including the use of elec-
13 tronic surveillance, to thwart future attacks on the
14 United States and to destroy the enemy.

15 (4) The President of the United States pos-
16 sesses the inherent authority to engage in electronic
17 surveillance of the enemy outside of the United
18 States consistent with his authority as Commander-
19 in-Chief under Article II of the Constitution.

20 (5) Congress possesses the authority to regulate
21 electronic surveillance within the United States.

22 (6) The Fourth Amendment to the Constitution
23 guarantees to the American people the right “to be
24 secure in their persons, houses, papers, and effects,
25 against unreasonable searches and seizures” and
26 provides that courts shall issue “warrants” to au-

1 thorize searches and seizures, based upon probable
2 cause.

3 (7) The Supreme Court has consistently held
4 for nearly 40 years that the monitoring and record-
5 ing of private conversations constitutes a “search
6 and seizure” within the meaning of the Fourth
7 Amendment.

8 (8) The Foreign Intelligence Surveillance Act of
9 1978 (50 U.S.C. 1801 et seq.) and chapters 119 and
10 121 of title 18, United States Code, were enacted to
11 provide the legal authority for the Federal Govern-
12 ment to engage in searches of Americans in connec-
13 tion with criminal investigations, intelligence gath-
14 ering, and counterintelligence.

15 (9) The Foreign Intelligence Surveillance Act of
16 1978 and specified provisions of the Federal crimi-
17 nal code, were expressly enacted as the “exclusive
18 means by which electronic surveillance . . . may be
19 conducted” domestically pursuant to law (18 U.S.C.
20 2511(2)(f)).

21 (10) Warrantless electronic surveillance of
22 Americans inside the United States conducted with-
23 out congressional authorization may have a serious
24 impact on the civil liberties of citizens of the United
25 States.

1 (11) United States citizens, such as journalists,
2 academics, and researchers studying global ter-
3 rorism, who have made international phone calls
4 subsequent to the terrorist attacks of September 11,
5 2001, and are law-abiding citizens, may have the
6 reasonable fear of being the subject of such surveil-
7 lance.

8 (12) Since the nature and criteria of the Na-
9 tional Security Agency (NSA) program is highly
10 classified and unknown to the public, many other
11 Americans who make frequent international calls,
12 such as Americans engaged in international busi-
13 ness, Americans with family overseas, and others,
14 have a legitimate concern they may be the inad-
15 vertent targets of eavesdropping.

16 (13) The President has sought and signed legis-
17 lation including the Uniting and Strengthening
18 America by Providing Appropriate Tools Required to
19 Intercept and Obstruct Terrorism (USA PATRIOT
20 ACT) Act of 2001 (Public Law 107–56), and the In-
21 telligence Reform and Terrorism Protection Act of
22 2004 (Public Law 108–458), that have expanded
23 authorities under the Foreign Intelligence Surveil-
24 lance Act of 1978.

(14) It may be necessary and desirable to amend the Foreign Intelligence Surveillance Act of 1978 to address new challenges in the Global War on Terrorism. The President should submit a request for legislation to Congress to amend the Foreign Intelligence Surveillance Act of 1978 if the President desires that the electronic surveillance authority provided by such Act be further modified.

(15) The Authorization for Use of Military Force (Public Law 107–40), passed by Congress on September 14, 2001, authorized military action against those responsible for the attacks on September 11, 2001, but did not contain legal authorization nor approve of domestic electronic surveillance not authorized by chapters 119 or 121 of title 18, United States Code, or the Foreign Intelligence Surveillance Act of 1978 (50 U.S.C. 1801 et seq.).

SEC. 3. REITERATION OF CHAPTERS 119 AND 121 OF TITLE 18, UNITED STATES CODE, AND THE FOREIGN INTELLIGENCE SURVEILLANCE ACT OF 1978 AS THE EXCLUSIVE MEANS BY WHICH DOMESTIC ELECTRONIC SURVEILLANCE MAY BE CONDUCTED.

(a) EXCLUSIVE MEANS.—Notwithstanding any other provision of law, chapters 119 and 121 of title 18, United

1 States Code, and the Foreign Intelligence Surveillance Act
2 of 1978 (50 U.S.C. 1801 et seq.) shall be the exclusive
3 means by which electronic surveillance may be conducted.

4 (b) FUTURE CONGRESSIONAL ACTION.—Subsection
5 (a) shall apply until specific statutory authorization for
6 electronic surveillance, other than as an amendment to
7 chapters 119 or 121 of title 18, United States Code, or
8 the Foreign Intelligence Surveillance Act of 1978 (50
9 U.S.C. 1801 et seq.), is enacted. Such specific statutory
10 authorization shall be the only exception to subsection (a).

11 **SEC. 4. DISCLOSURE REQUIREMENTS.**

12 Not later than 14 days after the date of the enact-
13 ment of this Act, the President shall submit to the Perma-
14 nent Select Committee on Intelligence and the Committee
15 on the Judiciary of the House of Representatives and the
16 Select Committee on Intelligence and the Committee on
17 the Judiciary of the Senate a report in classified form
18 identifying the United States persons who have been the
19 subject of electronic surveillance not authorized to be con-
20 ducted under the Foreign Intelligence Surveillance Act of
21 1978 (50 U.S.C. 1801 et seq.) or chapters 119 or 121
22 of title 18, United States Code, and the basis for the selec-
23 tion of such persons for such electronic surveillance.

1 **SEC. 5. ELECTRONIC SURVEILLANCE DEFINED.**

2 In this Act, the term “electronic surveillance” has the
3 meaning given the term in section 101(f) of the Foreign
4 Intelligence Surveillance Act of 1978 (50 U.S.C. 1801(f)).

